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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,579	01/12/2001	Robert F. Heard	91805001	1809

30184 7590 02/05/2004

MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C.  
1899 POWERS FERRY ROAD  
SUITE 310  
ATLANTA, GA 30339

EXAMINER

HORTON, YVONNE MICHELE

ART UNIT PAPER NUMBER

3635

DATE MAILED: 02/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/759,579

Applicant(s)

HEARD ET AL.

Examiner

Yvonne M. Horton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1,2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 12,13,15-19 is/are allowed.
- 6) ☐ Claim(s) 1,2,4,5,7-11 and 20 is/are rejected.
- 7) ☐ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the channel adapted to cooperatively receive either of two differing thickness of siding must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Specification***

The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the specification merely details that the channel, with the raised step removed, is dimensioned to accommodate a variety of sidings; wherein any of a variety of shapes may be utilized. The specification also details that a variety of types of sidings may be employed; however, there is no support in the specification for sidings having two differing thickness being employed. Although the figures appear to show the channel having a step that, according to one having ordinary skill in the art,

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may be dimensioned to receive, for instance, a siding member conforming to the dimensions of the stepped area and the total dimensions of both channels (90) and (95) together (at least at the ends), a siding member having dimensions equivalent to the channel (90) alone, a siding member having dimensions equivalent to the channel (95) alone, or a siding having dimensions ranging anywhere between the total width of the channels (90) and (95) together. Hence, the specification is not clearly supportive of the subject matter as defined in claims 1,12 and 20. Clarification and/or correction are required.

***Allowable Subject Matter***

The indicated allowability of claims 7-9 and 20 is withdrawn in view of the newly discovered reference(s) to GULINO. Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1,2,4,5,7-11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent #5,836,123 to GULINO. Regarding claims 1 and 20, GULINO discloses the use of a decorative member (701,801) including a solid rectangular portion not shown but similar to rectangular wing portions (303) each having a length (L) that is greater than a width (W) thereof, and a thickness (T). The rectangular portion further includes a top surface (704,804) and a bottom surface (705,805) wherein the

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bottom surface (705,805) overlies the building as shown in figure 1. The decorative member of GULINO also includes a flange portion (713,714) and (818) in parallel relationship with the bottom surface (705,805); wherein the flange (713,714) and (818) extend beyond the width (W) of the rectangular portion. GULINO also discloses the use of a channel (710,810) formed between the flange portion (713,714) and (818) and the top surface (704,804) wherein the channel is adapted to receive a siding member (S), see the marked attachment. GULINO discloses the basic claimed decorative member except for explicitly detailing that his member is a "brickmold" and except for detailing the sidings of two differing thickness may be accommodated by the channel. Although GULINO does not explicitly detail his decorative member as being a "brickmold", he does detail that his decorative member is a corner trim piece. Corner trim pieces, trim pieces, and brickmolds are art recognized equivalents for their use in providing external decorative devices to a structure. Further, the applicant is reminded that the manner in which a device is employed does not differentiate the claimed device from a prior art apparatus satisfying the same structural limitations. Hence, although the device of GULINO is a corner trim device, it is a trim device that satisfies all of the structural limitations of the claimed apparatus. In regards to the siding thicknesses, due to the step portion (colored red in the marked attachment of figure 8), it would have been obvious to one having ordinary skill in the art at the time the invention was made that the channel (710,810) is fully capable of being adapted to receive a siding have differing thicknesses. In reference to claim 2, the decorative device of GULINO includes a

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decorative portion that is carried by the top surface, column 4, lines 21-26 and column 7, lines 53-61. Regarding claim 4, the flange (713,14) and (818) is integral with the decorative device. In reference to claims 5 and 7, the flange (713,714) and (818) is affixed to the building by a fastening means such as a nail, column 8, lines 24-27. Regarding claim 8, although GULINO does not detail the use of a screw per se', he does detail the use of a nail. Nail and screws are art recognized equivalents. The only requirement that GULINO has is that the fastening means not be cleated. Screws, being similar to nails are not cleated. Hence, it would have been obvious to one having ordinary skill in the art that the selection of either the nail or screw would have been well within the general skill of a worker in the art. In reference to claim 9, GULINO does not detail the use of adhesive as a type of fastening means; however, nails, screws, glue and adhesives are also art recognized equivalents for their use in the art as securing means. Again, the selection of either would have been an obvious matter of design choice. Nail or screws might be employed if the type of decorative member is made from a material that does not secure well with an adhesive; whereas an adhesive might be employed alone or in addition to a nail or a screw. When an adhesive is used along with nails or screws, usually, the adhesive is used to provide added protection in securing the members. Regarding claim 10, the flange (713,714) and (818) also includes holes (715,815) for receipt of the fasteners. In reference to claim 11, the decorative device of GULINO is made from a polyvinyl chloride. GULINO does not explicitly detail whether his PVC is cellular; however, PVC is commonly available in the

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art in a cellular form and a resinous form. The selection of either would have been an obvious matter of design choice. Both cellular and resinous PVC plastics have similar properties or characteristics and function similarly. Hence, the selection of either would have been well within the general skill of a worker in the art. In further regards to claim 20, GULINO also discloses the use of a step portion, colored red in the marked attachment.

### ***Allowable Subject Matter***

Claim 6 remains objected to as being dependent upon a rejected base claim, but would be allowable for the reasons indicated in the previous Official Actions if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 12,13 and 15-19 remain as being allowed for the reasons indicated in the previous Official Actions.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1,2,4,5,7-11 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne M. Horton whose telephone number is (703)308-1909. The examiner can normally be reached on 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl D. Friedman can be reached on (703)308-0839. The fax phone

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number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of a large, stylized 'Y' followed by several loops and a final vertical stroke.

YMH  
Primary Examiner  
February 4, 2004



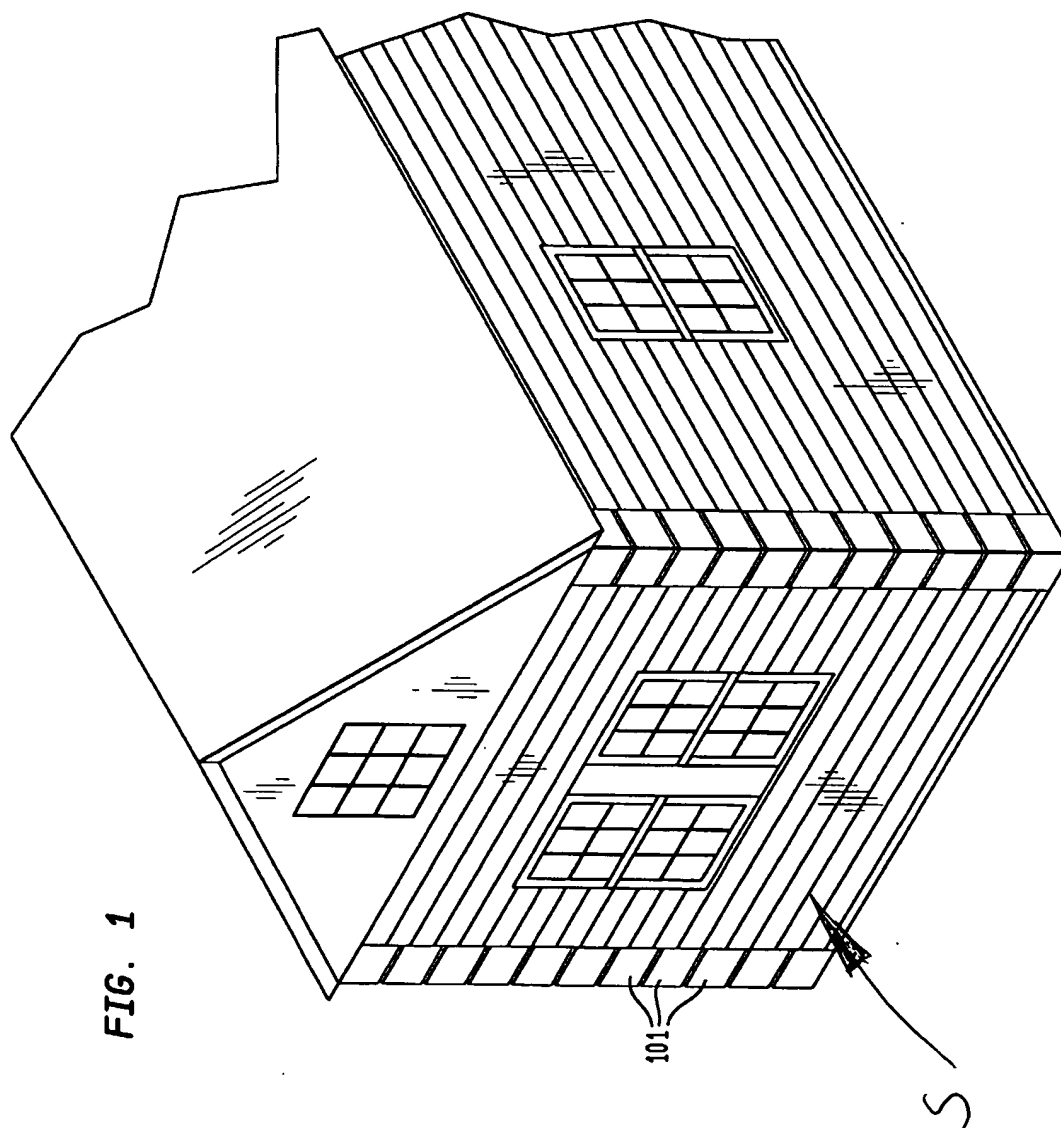


FIG. 2

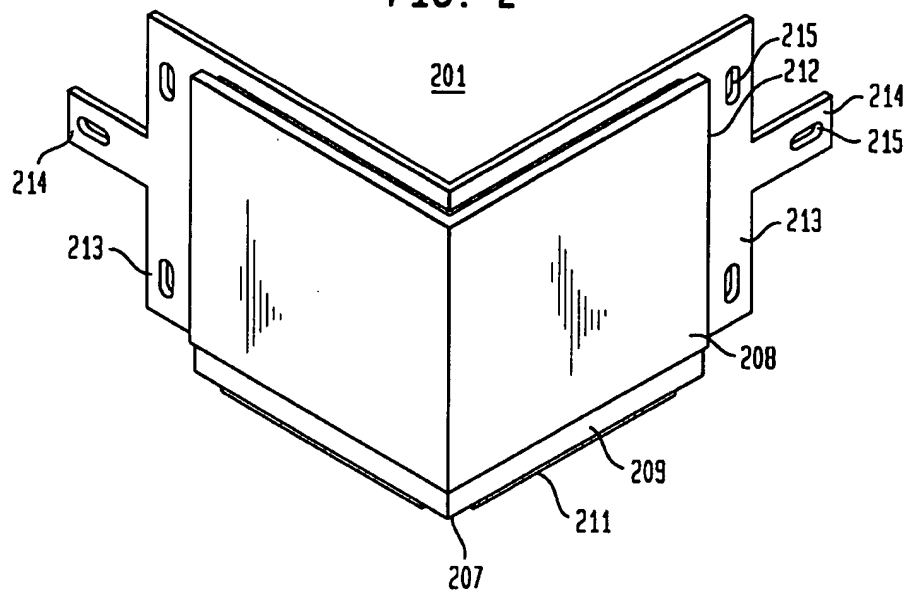


FIG. 3

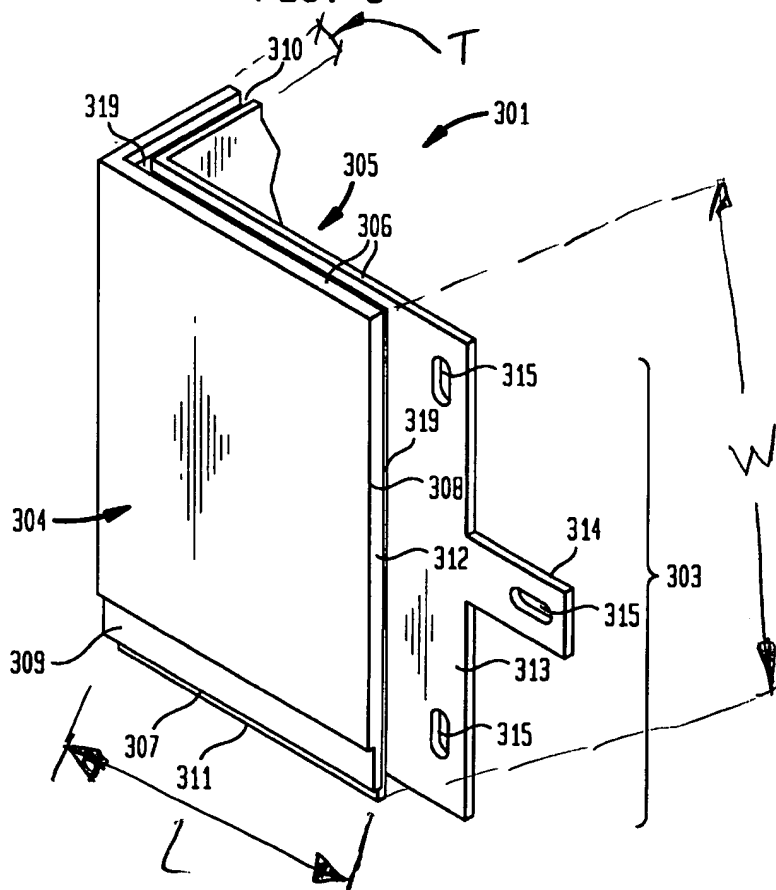


FIG. 7

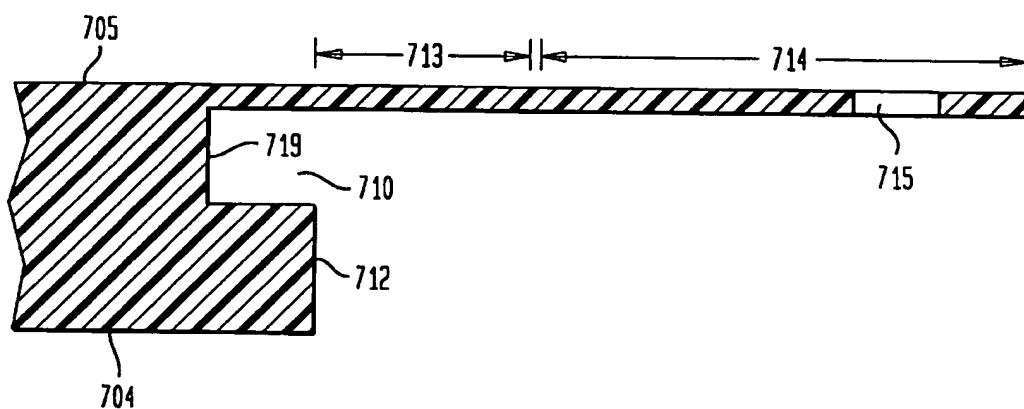


FIG. 8

